Special Civil Application No 6249 of 1987

Date of decision: 02nd February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

- 1. Whether Reporters of Local Papers may be allowed to see the judgments? No
- 2. To be referred to the Reporter or not? No
- 3. Whether Their Lordships wish to see the fair copy of the judgement? No
- 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
- 5. Whether it is to be circulated to the Civil Judge? No

JINABHAI DAHYABHAI vs COMPETENT AUTHORITY

Appearance:

Shri J.R. NANAVATY, Advocate for the Petitioner

Shri D.N.PATEL, Assistant Government Pleader for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA (02nd February 1996)

ORAL JUDGEMENT

The order passed by the Competent Authority at Rajkot (Respondent No.1 herein) on 30th October 1984 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common order passed by the Urban Land Tribunal at Ahmedabad (Respondent No.2 herein) on 12th October 1987 inter alia in Appeal No.Rajkot-1713 of 1984 is under challenge in this petition under Article 227 of the Constitution of India. By its impugned order,

respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 8514.54 square metres.

- 2. The facts giving rise to this petition move in a narrow compass. The petitioner was in occupation and possession of several properties within the urban agglomeration of Rajkot when the Act came into force. He therefore filed the necessary declaration prescribed form under section 6 (1) thereof. That form was duly processed by respondent No.1. After observing all necessary formalities according to law, by his order passed on 30th October 1984 under section 8 (4) thereof, respondent No.1 declared the holding of the petitioner to be in excess of the ceiling limit by 8514.54 square metres. Its copy is at Annexure-A to this petition. The aggrieved petitioner carried the matter in appeal before respondent No.2 under section 33 thereof. It came to be registered as Appeal No.Rajkot-1713 of 1984. heard with Appeal No.Rajkot-1687 of 1984. By his common order passed on 12th October 1987 in the aforesaid two appeals, respondent No.2 inter alia dismissed the petitioner's appeal. Its copy is at Annexure-B to this The aggrieved petitioner has thereupon approached this court by means of this petition under Article 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition.
- 3. As rightly submitted by learned Advocate Shri Nanavaty for the petitioner, the constructed property situated at Kevdavadi Main Road admeasuring 209.2 square metres has wrongly been included in the petitioner's holding contrary to the binding ruling of the Supreme Court in the case of MEERA GUPTA v. STATE OF WEST BENGAL reported in AIR 1992 SUPREME COURT at page 1567. In view of the aforesaid binding ruling of the Supreme Court, that property will have to be excluded from the petitioner's holding.
- 4. It has been urged by learned Advocate Shri Nanavaty for the petitioner that plot No.14 of survey No.176 admeasuring 1135.67 square metres had industrial sheds in existence on the date of coming into force of the Act and that area ought to have been excluded from the holding of the petitioner. Both the authorities below have found that no evidence worth the name was brought on record to show that such construction existed prior to coming into force of the Act. It is a pure finding of fact. It cannot be interfered with in this

petition under Article 227 of the Constitution of India.

- 5. It may be mentioned that learned Assistant Government Pleader Shri Patel had kept the officers from the office of respondent No.1 present in the court with the record of this case. Even on perusal of record it is found that no material was brought on record by or on behalf of the petitioner to show that the aforesaid parcel of land bearing plot No.14 in survey No.176 admeasuring 1135.67 square metres had any construction thereon prior to coming into force of the Act.
- 6. The request made by learned Advocate Shri Nanavaty for the petitioner that the petitioner may be given an opportunity to produce the necessary evidence in that regard by remanding the matter cannot be acceded to at this stage. If the petitioner was in possession of some evidence in that regard, he ought to have produced it before respondent No.1 or even at the appellate stage before respondent No.2 after seeking leave to produce such evidence if he could not produce respondent No.1 for some good reasons. Nothing of the sort has been done. In that view of the matter, the matter cannot be remanded to respondent No.1 for giving a fresh opportunity to the petitioner to produce some evidence, if any, in that regard.
- 7. The petitioner's one-eighth share in various plots in survey No.304 has rightly been included in his holding in view of section 4 (5) of the Act.
- 8. I think the impugned order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-B to this petition deserves to be maintained subject to modification by excluding the constructed property to the tune of 209.2 square metres from the petitioner's holding in view of the aforesaid binding ruling of the Supreme Court.
- 9. In the result, this petition is accepted to the aforesaid extent. The impugned orders at Annexures-A and B to this petition are substantially affirmed. The area declared surplus thereunder would stand modified from 8514.54 square metres to 8305.52 square metres. The final statement under section 9 of the Act may accordingly be prepared by respondent No.1 herein according to law. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.